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SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

Christopher Shays, Connecticut
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MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging Threats,
and International Relations

From: Christopher Shays 
Chairman

Date: June 8, 2006

Subject: Briefing memorandum for June 13, 2006 Subcommittee hearing.

Attached find the briefing memorandum required by Committee rules for the hearing on Tuesday, June 13, 2006 entitled, *Private Security Firms: Standards, Cooperation and Coordination on the Battlefield*. The hearing will convene at 2:00 pm in 2247 Rayburn House Office Building.

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BERNARD SANDERS, VERMONT,
INDEPENDENT

June 8, 2006

MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging Threats, and International Relations

From: Mr. Robert Kelley, Chief Counsel, and Mr. Robert Briggs, Analyst **RK RD**

Re: Briefing memorandum for the hearing *Private Security Firms: Standards, Cooperation and Coordination on the Battlefield*, scheduled for June 13, 2006 at 2:00 p.m. in room 2247 Rayburn House Office Building, in Washington, D.C.

PURPOSE OF THE HEARING

The hearing will examine the roles and missions, standards, capabilities, coordination and actions of private security firms (PSF) protecting government and contractor personnel.

HEARING ISSUES

1. What are the evolving roles and missions of private security firms operating in Iraq?
2. What standards and capabilities are private security firms required to have before being hired as a government contractor?
3. To what extent do private security firms coordinate with the U.S. military and other government agencies operating in Iraq?

BACKGROUND

Number of Private Security Firms (PSFs) and Personnel in Iraq

According to Department of Defense (DoD) estimates, there are some 60 private security companies operating in Iraq, with approximately 25,000 personnel. (**Attachment 1**). According to the Baghdad-based Private Security Company Association of Iraq (PSCAI) association, there may be more than 150 PSFs operating in Iraq, with more than 50,000 personnel. (**Web Resource 1**).

Legal and Functional Differences between PSFs and Other Types of Contractors working with DoD and other US Agencies

Legally, companies fulfilling contracts with DoD are subject to the military chain of command (but not the Uniform Code of Military Justice (UCMJ) absent a Congressional Declaration of War), and their personnel can be prosecuted by the Department of Justice under Federal law as a result of the Military Extraterritorial Jurisdiction Act (MEJA), 18 USC Section 3261. The MEJA provides for criminal prosecution of any person deployed overseas with DoD for any federal crime committed outside the United States. (**Attachment 2**)

Many companies with DoD contracts perform a range of activities, from operating food, laundry and sanitation facilities for the troops, and providing logistics and maintenance for military operations.

PSFs, on the other hand, typically provide only security, including secure transportation, not to the DoD or the uniformed armed forces, but to civilian US agencies and reconstruction contractors. (PSFs also provide security to private companies not working on government contracts, such as the US press bureaus and journalists in Iraq.)

Legally, PSFs are not in the military chain of command nor subject to the UCMJ because a commander and his forces are not in a contractual relationship with a PSF. This is the case even though the PSF may be operating with arms and armored vehicles in the commander's area of responsibility. (**Attachment 1**) Nor are PSF personnel subject to US criminal law for acts committed outside the US, since PSF personnel are not

covered by the MEJA. (**Attachment 2**)

PSF status under Iraqi law is unclear. CPA Order No. 17 (revised) states that PSFs, and all other contractors, are generally immune from Iraqi legal process for acts performed in accordance with their contracts. (**Attachment 3**) CPA Orders are part of Iraqi law by virtue of their incorporation in the Iraqi Transitional Administrative Law (TAL), which is part of Iraqi law. (**Attachment 1**) Iraq's new constitution includes the TAL as part of Iraq law until such time as the Iraqi Parliament expressly votes to repeal its provisions. The Iraqi Ministry of Interior requires PSFs to register and obtain a license to do business, but the Ministry does not regulate PSFs. (**Web Resource 1**)

If captured by insurgents in Iraq, personnel under contract to DoD or the uniformed armed forces are considered noncombatant civilians accompanying the forces, and are protected under international law. (**Attachment 2**)

For PSF personnel not working for DoD who are captured in Iraq, the legal protections under international law are unclear. Given the ruthless character of the insurgency, these distinctions between PSF and DoD contractor personnel may be without a practical difference, but for conflict and stabilization operations in other countries today or in the future, the legal status of PSF personnel can be critical.

What PSFs do in Iraq and Who are their Clients

PSFs typically provide security for convoys, personnel, housing compounds and reconstruction project sites. They also provide security planning and intelligence for their clients. PSFs include many American-owned companies, as well companies from the United Kingdom, coalition partners and other countries. Nationals of many countries are employed by PSFs in Iraq. (**Attachment 2**)

PSF work for the State Department and US Government reconstruction offices

The State Department is responsible for the security of most Executive Branch US Government employees in Iraq, including USAID.

The US Embassy Regional Security Officer is the Ambassador's implementation officer for security issues and sets out specific security policies and procedures for all persons under the Ambassador's security responsibility, i.e. US Executive Branch agencies and their personnel, other than DoD. **(Attachment 1)** The State and Defense Departments have Memoranda of Agreements between them clarifying each Department's security responsibilities in Iraq. **(Attachment 1)**

To carry out its security responsibility in Iraq, the State Department through its Diplomatic Security Bureau and the Embassy Regional Security Officer contract with PSFs to supplement their own Diplomatic Security Personnel Security Details (PSDs). Hence, Clients of PSFs include the US Embassy and Mission in Baghdad and the US Agency for International Development (USAID).

The American Ambassador, senior US diplomats, USAID officials and US Government officials (including Congressional Delegations (CODELs) meeting in the Embassy and with Iraqi Government officials while visiting Iraq) are transported and guarded by American personnel from American-owned PSFs assisting State Department Diplomatic Security officers. (The US military transports and provides security for CODELs when outside the Embassy and the International Zone).

A British-owned PSF has the contract to provide security to the US Army Corps of Engineers and the US Project Contracting Office (PCO), agencies which are central to reconstruction projects in Iraq. **(Attachment 1)**

PSF Work for Reconstruction Contractors

Reconstruction contractors are responsible for their own security. These contractors employ PSFs from a variety of countries, including Iraqi-owned companies with Iraqi personnel. These PSFs are hired based upon the contractor's own judgments on cost requirements, performance and other factors. **(Attachment 1)**

These reconstruction contractors can choose how much or how little security they want. They choose whether to participate in the Reconstruction Operations Centers which provide coordination with the military (described in more detail below). They also choose whether to be

"high profile" with large SUVs easily identifiable as "Westerners", or "under the radar" in low profile vehicles similar to Iraqi civilian vehicles, or to use other measures and tactics, at their own discretion based on their own evaluations and that of their PSFs.

Casualties among PSFs and Contractors in Iraq

Significant numbers of employees of PSFs have been killed or wounded in Iraq. The one-time Report to Congress by the Department of Defense under Section 1206 of Public Law 108-375, covering the period May 1, 2003 - October 28, 2004, estimated there were 166 contractors killed. Sixty four were Americans. There were also 1171 contractor casualties, and 175 of these were Americans. (these figures include both PSF personnel and contractors with DoD). **(Attachment 4)** GAO's July 2005 Report estimated more than 200 contractor personnel have been killed in Iraq as of July 2005. **(Attachment 1)**

There has been strong US public and policy reaction to the killing of American PSF personnel. On March 31, 2004, in Fallujah, four US personnel of a PSF were killed and their bodies desecrated after their vehicle was ambushed. **(Attachment 1; Attachment 3)**

Costs of PSFs in Reconstruction Contracts

GAO found in its July 2005 Report that security costs in reconstruction contracts can be "considerable, as it accounted for 15 percent or more on 8 of the 15 contracts we reviewed...". **(Attachment 1)** And GAO also found that US officials and contractors acknowledged security costs had diverted planned reconstruction resources and led to the cancellation or reduction of certain reconstruction projects, though they also noted that other factors have affected reconstruction projects. For some reconstruction projects in dangerous areas, security costs are said to run as much as 40% of the total amounts expended on a particular project. **(Attachment 1)**

GAO also found that the Executive Branch agencies have "limited capabilities to assess the cost impact of using (PSFs) ... and do not comprehensively track costs associated with (PSFs)." **(Attachment 1)**

The question of incidents between Coalition Armed Forces and PSFs:
"Blue on White Violence"

"Blue on white violence" is the term used by contractors and the military in Iraq to describe situations when the military fires at friendly forces, such as contractors, or as happens less frequently, when PSF employees fire at military forces. **(Attachment 1)** GAO found in its July 2005 Report that both US military commands in Iraq and PSFs are concerned about incidents in which the military fires at PSF personnel or vehicles. In December 2004, the Multi National Corps-Iraq (MNC-I) issued an order to its subordinate commands, in an effort to reduce blue on white incidents, setting out procedures that PSFs should use when encountering the military. These included "no passing" of military convoys by PSF vehicles, a rule that military warning shots be fired away from PSF vehicles, and a 200 meter distance be kept by PSF vehicles from military convoys. **(Attachment 1)**

Still, blue on white incidents reportedly continue to occur. In early 2005, MNC-I issued a "Top 10" list of "Lessons Learned" from a study of blue on white incidents occurring in a 3-month period between November 2004 and January 2005. The Top 10 list included the need for the military to judge there was hostile intent before it used deadly force. Other Lessons Learned were similar to the procedures MNC-I issued in December 2004. **(Attachment 1)**

The Six Reconstruction Operations Centers around Iraq for PSF-Military Coordination

To improve coordination between the military and PSFs, and Non-Governmental Organizations operating in Iraq, the US Army in May 2004 awarded a contract to a British firm to establish and operate a Reconstruction Operations Center (ROC). Today, there are six ROCs positioned in Iraq: Baghdad, Mosul, Tikrit, Fallujah, Diwaniya, and Basra. **(Attachment 1)**

PSFs and NGOs choose whether to participate in ROCs, which are staffed by a combination of military, US Government civilians, and contractor personnel. For example, a PSF may choose to file its convoy

route plan for an upcoming work site visit. In response, the PSF would receive unclassified intelligence information about that convoy route, the work site, and other factors relevant to the PSF's route plan. Through the ROC, a PSF can request military assistance in the event the PSF's convoy comes under attack. **(Attachment 1)**

DISCUSSION OF THE HEARING ISSUES

1. What are the evolving roles and missions of PSFs operating in Iraq?

PSF roles and missions have grown to substantial size today since May 2003

The roles and mission of PSFs operating in Iraq are to protect their clients – principally the US Embassy, USAID and its NGO “implementing partners”, and reconstruction contractors – from insurgent attacks, and to move them safely on missions through regions of Iraq in which the Coalition military and, increasingly, Iraqi Security Forces, have security responsibilities.

GAO found that in the period before the Coalition's military operations in Iraq, US government agencies responsible for reconstruction believed that there would be little threat from insurgents or terrorists. **(Attachment 1)** Reconstruction planners did not anticipate that reconstruction contractors would require the substantial security -- e.g., well-armed and trained personnel, armored vehicles, and detailed planning for convoys and site protection -- that contractors use today.

As the security situation worsened in the summer of 2003 with the bombing of the United Nations building in Baghdad, reconstruction contractors increased their security. **(Attachment 1)** Hence, the roles and missions of PSFs operating in Iraq have evolved from limited, relatively small scale ones in the first months after the establishment of the Coalition Provisional Authority in May 2003 to the substantial security operations that the US Embassy and reconstruction contractors typically use today.

Costs of security in reconstruction have grown with the enlargement of PSF roles and missions but Government systems do not separately track security costs

GAO found that US government contractor officials in the reconstruction program in Iraq acknowledged that cost of security services and equipment, including armored vehicles, has been higher than originally foreseen. **(Attachment 1)** And the State Department quarterly reports to Congress on reconstruction state that there have been increased security costs which have been funded. **(Attachment 3)** But the State Department quarterly reports, GAO found, do not identify the size of security costs, or their impact on reconstruction projects and available funding. **(Attachment 1)** It should be noted that this applies to security costs on reconstruction projects, where there is complexity owing to the fact that the subcontractors and lower tier suppliers often provide for their own security but do not necessarily report these to the prime contractor; hence, in these cases, tracking of prime contractors' security costs will not capture subcontractors' security costs.

GAO recommended that the Department of State, DoD, and USAID establish means to track and account for security costs in reconstruction to develop more accurate budget estimates and to improve agencies' ability to assess and manage security costs in future reconstruction efforts. **(Attachment 1)**

In response, the Department of State did not indicate whether it agreed or not, but noted that it can capture costs incurred by prime contractors, and can work with prime contractors to determine the feasibility of providing subcontract security costs. **(Attachment 1)**

DoD concurred with the GAO recommendation, noting that the State Department is the lead agency for reporting to Congress on reconstruction status and DoD would support the Department of State's efforts to collect security cost data. **(Attachment 1)** USAID found the GAO report accurate, but did not comment on the recommendations. **(Attachment 1)**

2. What standards and capabilities are PSFs required to have before being hired as a government contractor?

Variations in mandating standards and capabilities for PSFs

There are no universally agreed criteria for PSF standards and capabilities.

The Department of State has criteria for its selection of PSFs to provide security to the US Embassy and USAID in Iraq. **(Attachment 1)** However, for PSFs providing security to reconstruction contractors, US government agencies funding and managing reconstruction contractors -- the Iraq Reconstruction Management Office (IRMO) in the US Embassy, the Project Contracting Office (PCO), the US Army Corps of Engineers, and USAID -- do not prescribe criteria or standards. **(Attachment 1)**

In the private sector, a code of conduct to which member companies pledge to adhere has been established by the International Peace Operations Association, the professional association in the PSF industry. On human rights, member companies pledge to comply with all applicable international humanitarian law and human rights law, including the Geneva Conventions. The Code of Conduct does not set detailed personnel or training standards, member companies set their own standards for personnel and training, which may vary depending on the type of security a client requires (e.g., ranging from a gate guard to a heavily armed convoy). **(Attachment 5)**

GAO recommended that US agencies consider options to help reconstruction contractors quickly and efficiently select PSFs, including the definition of minimum standards for PSF training and personal qualifications, and establishment of qualified vendor lists. **(Attachment 1)**

In response, the Department of State stated that it can make its own criteria available to all contractors operating in Iraq to aid in their selection of PSFs. But the State Department said that it would be reluctant to mandate the use of these State Department criteria because mandatory standards could result in contractors asserting that a security failure was the fault of poor governmental standards. State also did not concur in the issuance of qualified vendor lists, again because it might allow contractors to allege poor government selection caused a security failure. **(Attachment 1)**

Any universal application in Iraq of standards and capabilities would have to take account of Iraqi PSFs. Reconstruction contractors or their Western PSFs often hire Iraqi PSFs to assist in security. Mandatory standards, such as law enforcement experience or educational requirements, would have to take account of differences between Western and Iraqi systems.

3. To what extent do PSFs coordinate with the U.S. military and other government agencies operating in Iraq?

PSFs' primary means of coordination with the U.S. military are the six Reconstruction Operations Centers (ROC) in various locations around Iraq. A current issue is whether contractors should be required to participate in the ROCs, i.e., file their convoy route plans and communicate with the military through the ROCs, or should their participation, as is the case today, be voluntary?

Some contractors are said to want to keep their convoy routes confidential, believing total confidentiality may give them greater security. Some may want to keep their routes confidential to provide a competitive advantage for business reasons.

The argument for mandatory participation in the ROC is that good coordination and improved security require that PSFs participate in the ROC procedures for information sharing and communication. The ROC in turn shares this contractor information with the military, helping to ensure the military is coordinated with PSFs in the military's area of responsibility.

Iraqi Security Forces and the need for PSFs to coordinate with them as well as the Coalition and US military

With Iraqi Security Forces increasingly taking the lead in more areas of Iraq from U.S. and Coalition military forces, improved procedures between PSFs and military forces will be even more necessary. The definition of "military forces" will increasingly include "Iraqi military and police forces." Language differences, cultural differences, and concerns about insurgents gaining access to security information, such as routes and locations, by infiltration or sources in the Iraqi Security Forces will likely affect coordination procedures where Iraqi Security Forces are involved.

DoD's development of improved procedures for coordination with PSFs and the Iraq Security Forces

In response to GAO's July 2005 recommendation for continued DoD assessments to determine if the new coordination procedures of December 2004 should be improved, DoD stated that the Joint Staff will "develop an approach for assessing and improving procedures for coordination between military forces and PSFs." DoD also agreed to develop a training strategy and materials for units deploying to Iraq that would provide information on the ROC, PSF procedures, and the military's own procedures. (**Attachment 1**)

These DoD assessment approaches and training materials should take account of the expanding role of Iraqi Security Forces, both in size and geographic responsibilities, and include procedures for PSF coordination with those Iraqi forces.

WITNESS TESTIMONY

Witnesses were told the purpose of the hearing is to examine the roles and missions, standards, capabilities, coordination and actions of PSFs protecting government and contractor personnel.

Mr. William M. Solis, Director, Defense Capabilities and Management, GAO, will update GAO's July 2005 Report, GAO 05-737 (**Attachment 1**) and report on a recent GAO visit to Iraq assessing PSFs' coordination with the military.

The Department of Defense will discuss DoD implementation of the GAO recommendations. DoD concurred in all GAO recommendations. These involved the development of improved coordination approaches and, for units deploying to Iraq, training materials on PSF operations and military procedures for coordinating with PSFs.

Mr. Greg Starr, Deputy Assistant Secretary, Bureau of Diplomatic Security, Department of State, will testify about the criteria the State Department uses in contracting with PSFs to protect State Department and USAID personnel and CODELS.

Mr. James Kunder, Assistant Administrator for the Near East and Asia, USAID, will testify about the use by USAID's reconstruction partners and its NGO aid-implementing partners of PSFs.

Executives of three leading PSFs have been invited to testify: Blackwater, DynCorp and Triple Canopy. They will testify about their companies' personnel standards and training, their roles and missions, and their experiences in Iraq coordinating with the Coalition military and the Iraqi Security Forces.

A representative of the trade association representing some PSFs, the International Peace Operations Association, will testify on the organization's code of conduct and its work on developing standards for personnel and training.

ATTACHMENTS

1. GAO report entitled “Rebuilding Iraq: Actions Needed to Improve Use of Private Security Contractors” GAO-05-737.
2. CRS report entitled “Private Security Contractors in Iraq: Background, Legal Status, and Other Issues” RL32419.
3. Coalition Provisional Authority Order Number 17 (Revised): Status of the Coalition Provisional Authority, MNF-Iraq, Certain Missions and Personnel in Iraq.
4. Public Law 108-375, Section 1206 Report.
5. International Peace Operations Association Code of Conduct and Background Material.

WEB RESOURCES

1. Private Security Company Association of Iraq
<http://www.pscai.org/>
visited May 26, 2006
2. Blackwater USA
<http://www.blackwaterusa.com/>
visited May 26, 2006
2. DynCorp International
<http://www.dyn-intl.com/>
visited May 26, 2006
3. Triple Canopy
<http://www.triplecanopy.com/triplecanopy/en/home>
visited May 26, 2006
4. International Peace Operations Association
<http://www.ipoaonline.org/home/>
Visited May 26, 2006

WITNESSES

Panel One

Mr. William M. Solis

Director, Defense Capabilities and Management
Government Accountability Office

Representative

Department of Defense

Mr. Greg Starr

Deputy Assistant Secretary
Bureau of Diplomatic Security
Department of State

Mr. James Kunder

Assistant Administrator for the Near East and Africa
U.S. Agency for International Development

Panel Two

Representative

Blackwater USA

Major General Robert Rosenkranz (US Army, Retired)

President

International Technical Service
DynCorp International

Mr. Ignacio Balderas

former CEO and current Board of Directors Member
Triple Canopy

Mr. Doug Brooks

President

International Peace Operations Association